

ADMINISTRATIVE PANEL DECISION

Alpargatas S.A, ALPARGATAS EUROPE, S.L.U v. Qiu Xiaofeng
Case No. D2022-4299

1. The Parties

The Complainants are Alpargatas S.A, Brazil, and ALPARGATAS EUROPE, S.L.U, Brazil, represented by PADIMA TEAM SLP, Spain.

The Respondent is Qiu Xiaofeng, China.

2. The Domain Names and Registrar

The disputed domain names <havaianas-brasil.com>, <havaianasjapanke.com>, <havaianasoutletportugal.com>, <havaianasskroutz.com>, <havaianasuae.com> and <havaianasvarvastossut.com> are all registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 17, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2022.

The Center appointed George R. F. Souter as the sole panelist in this matter on December 15, 2022.

The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The first Complainant, Alpargatas S.A, was founded in 1907 and headquartered in Sao Paulo, Brazil, and is the owner of the HAVAIANAS trademark. The second Complainant, Alpargatas Europe, SLU, is the first Complainant's exclusive licensee in Europe. The Complainants are both part of the Alpargatas Group, which advertises and sells clothing, footwear, and headgear under the HAVAIANAS brand, and is known for its flip-flop sandals, now sold in over 100 countries.

The first Complainant is the proprietor of numerous registrations of its HAVAIANAS trademark, including:

European Union trademark registration number 003772431, registered on September 20, 2005, European Union trademark registration number 007156128, registered on March 23, 2009, and; European Union trademark registration number 008664096, registered on April 23, 2010.

All six disputed domain names were registered on July 11, 2022, and all resolve to commercial websites offering products competing with those of the Complainant, using the Complainant's branded items, trademarks and images, without any disclaimer informing about the lack of relationship with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainants allege that the disputed domain names are all confusingly similar to their HAVAIANAS trademark, containing their HAVAIANAS trademark in its entirety, with the mere addition of inconsequential elements in a number of languages, including Finnish, Greek and Serbian.

The Complainants allege that the Respondent lacks rights or legitimate interests in the disputed domain names, in particular that the Respondent is not generally known by any of the disputed domain names, and the Complainants have never granted permission to the Respondent to use their HAVAIANAS trademark in connection with the registration of a domain name, or otherwise.

The Complainants allege that the disputed domain names were registered in bad faith, and are being used in bad faith in connection with the commercial websites mentioned above.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainants must prove to merit a finding that the disputed domain name be transferred to the Complainants:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A. Confusing similarity

The Panel finds that the Complainants have rights to their HAVAIANAS trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level-Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the gTLD “.com” to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainants’ HAVAIANAS trademark is clearly recognizable in all the disputed domain names, rendering the disputed domain names confusingly similar to the Complainants’ trademark, and the additional elements are inconsequential.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain names at issue.

B. Rights or Legitimate Interests

The Panel considers that the Complainants’ allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Furthermore, the nature of the disputed domain names, incorporating the Complainant’s well-known HAVAIANAS trademark with additional terms (some of them connected to the Complainant’s business such as “varvastossut”, meaning sandals in Finnish, or the term “outlet”, and other disputed domain names with geographical terms), carry a risk of implied affiliation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 2.5.1.

Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain names.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainants’ HAVAIANAS trademark was deliberately appropriated in the disputed domain names are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain names and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with the offering of goods competing with those of the complainant constitutes use of that disputed domain name in bad faith. The circumstances of the present case (the nature of the disputed domain names and the content of the websites to which they resolve, without any disclaimer informing about

the lack of relationship with the Complainants) constitute, in the Panel's opinion, an egregious example of bad faith use, and, accordingly, the Panel finds that the disputed domain names are being used in bad faith. Accordingly, the Panel finds that the Complainants have satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <havaianas-brasil.com>, <havaianasjapanke.com>, <havaianasoutletportugal.com>, <havaianasskroutz.com>, <havaianasuae.com>, and <havaianasvarvastossut.com>, be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: December 29, 2022